



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: A & S Taub
File: B-226270
Date: June 1, 1987

DIGEST

Protest is dismissed where protester is not an interested party since it would not be in line for award even if its protest were sustained.

DECISION

A & S Taub protests the rejection of its telegraphic bid under invitation for bids (IFB) No. DLA100-87-B-0123 issued by the Defense Logistics Agency (DLA). Taub argues that certain provisions of the IFB implied that telegraphic bids were permissible.

We dismiss the protest based on DLA's report which shows that Taub is not an interested party under our Bid Protest Regulations. See 4 C.F.R. § 21.3(f) (1985), which provides that when the propriety of a dismissal becomes clear only after information is provided by the contracting agency, we will dismiss the protest at that time.

The IFB was issued on December 23, 1986, as a total small business set-aside and requested bids to supply DLA with 705,400 plastic identification badges. Prior to bid opening, DLA received a telegram from Taub containing a price quotation on the items sought; Taub's completed and signed solicitation form was not received until after bid opening. DLA returned both documents to Taub advising it that the solicitation did not permit consideration of either its telegraphic bid or its late offer.

In its administrative report to our Office, DLA states that two other qualified offerors--Graphics Industries, Inc., and Insulfab Plastics, Inc.--submitted prices lower than that quoted by Taub. DLA points out that even if Taub's telegraphic bid were considered, it would be third low and thus, not in line for award. DLA maintains that Taub is therefore not an interested party under our Bid Protest Regulations and its protest should be dismissed. We agree.

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Under our Bid Protest Regulations, if a bidder would not be next in line for award of the contract were the protest upheld, the bidder is not an interested party eligible to pursue the protest. See 4 C.F.R. §§ 21.0(a) and 21.1(a); Charles J. Dispenza and Associates, B-224524, Dec. 3, 1986, 86-2 C.P.D. ¶ 636; Isometrics, Inc., B-224208, Nov. 3, 1986, 86-2 C.P.D. ¶ 513. Since Taub, as third low bidder, would not be in line for award of the contract even if DLA considered its bid, it is not an interested party.

In its comments on the agency's report, Taub, for the first time, argues that the "contracting officer should not have accepted the bids" of the second- and fourth-low bidders because they are not small business concerns. If this were the case, Taub argues, and if first article testing were required of the low bidder's product and it failed, Taub would be in line for award.

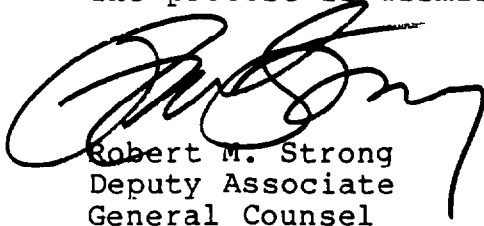
We note that Taub initially filed its protest with our Office on February 10, 1987, and did not raise the issues concerning the other bidders' qualifications until March 30. Since Taub could have raised these matters in its initial protest, their introduction some 48 days later is untimely. Synercom Technology, Inc., B-224477, Oct. 1, 1986, 86-2 C.P.D. ¶ 372; Arndt & Arndt, B-223473, Sept. 16, 1986, 86-2 C.P.D. ¶ 307. Moreover, the Small Business Administration (SBA) has conclusive authority to determine matters of small business size status for federal procurement purposes, and our Office will not consider that issue. See 15 U.S.C. § 637(b)(6) (1982); Allied Sales and Engineering, Inc., B-224345, June 26, 1986, 86-2 C.P.D. ¶ 13. In the absence of a determination by SBA that the second- and fourth-low bidders are not eligible for award because they do not qualify as small business concerns, and because Taub only speculates that first article testing will be required of, and failed by, the low bidder, Taub's comments provide no basis for us to conclude that it is an "interested party."

In any event, we note that as a general rule, telegraphic bids may not be considered by a procuring agency unless they are explicitly authorized by the solicitation. Titmus Optical, Inc., B-222810, July 2, 1986, 86-2 C.P.D. ¶ 26; Marbex, Inc., B-221995, Feb. 28, 1986, 86-1 C.P.D. ¶ 212.

Here, the solicitation at paragraph LI1, entitled "Solicitation Provisions Incorporated by Reference," included a box which was required to be checked in order to incorporate Federal Acquisition Regulation, § 52.214-13 which authorizes the submission of telegraphic bids. Since this box was not checked, it would appear that DLA properly rejected Taub's

telegraphic bid. Titmus Optical, Inc., B-222810, supra;
Marbex, Inc., B-221995, supra.

The protest is dismissed.



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